

## RETURN

To an Order of the House for a Return of copies of all correspondence, telegrams, Orders of Court, and report of the Returning Officer in connection with the late Provincial Election in the District of Fernie, and in connection with the application made for a re-count of the ballots cast in said election before a Judge of the County Court.

RICHARD McBRIDE,  
*Provincial Secretary.*

*Provincial Secretary's Office,  
4th December, 1903.*

FERNIE, B.C., EAST KOOTENAY,  
October 10th, 1903.

SIR,—I enclose herewith a return of votes cast for each candidate at the recent election for the Fernie Electoral District, together with the report of votes rejected, required by section 151, sub-section (2), of the Provincial Elections Act, and of the verification of the ballot papers returned by the several Deputy Returning Officers.

I have, etc.,  
(Signed) J. S. T. ALEXANDER.

*The Deputy Provincial Secretary, Victoria, B. C.*

(Acknowledged 22nd October, 1903.)

[Enclosures.]

### FERNIE ELECTORAL DISTRICT.

#### *Report of ballots rejected and not counted.*

(1.) Want of official mark .....	1
(2.) Voting for more candidates than entitled to .....	5
(3.) Writing or mark by which voter could be identified ..	9
(4.) Unmarked or void for uncertainty .....	3
(5.) Being dissimilar to those officially supplied .....	1*
(6.) Being marked outside the circular white portion of the ballot paper	31
Total .....	50

\*This ballot contained only one name, the other two having been torn off by the voter.

(Signed) J. S. T. ALEXANDER,  
*Returning Officer.*

### FERNIE ELECTORAL DISTRICT.

Upon the final count of the votes cast at the election held on the 3rd day of October, 1903, for a Member to represent the Fernie Electoral District in the Legislative Assembly of British Columbia, I verified the number of ballots returned by the several Deputy Returning Officers, and found the same to tally correctly with the reports sent in by them.

Dated this 10th day of October, 1903.

(Signed) J. S. T. ALEXANDER,  
*Returning Officer Fernie Electoral District.*

## FERNIE ELECTORAL DISTRICT.

*Return of Election held October 3rd, 1903.*

Poll No.	Place.	McPherson	Ross.	Smith.	Rejected.	Total.
1	Fernie .....	28	67	45	11	151
2	Fernie .....	31	62	63	7	163
3	Fernie .....	22	52	50	9	133
4	Crow's Nest .....	4	0	8	3	15
5	Loop .....	0	3	4	0	7
6	Michel .....	57	19	36	4	116
7	Sparwood .....	3	3	6	2	14
8	Coal Creek Mines .....	44	14	10	4	72
9	Morrissey .....	0	20	11	1	32
10	Morrissey Mines .....	5	27	12	1	45
11	Tonkin .....	3	17	31	3	54
12	Elko .....	1	6	17	2	26
13	Jaffray .....	12	15	8	1	36
14	Elkmouth .....	10	6	5	1	22
15	Phillips .....	1	5	3	1	10
	Total .....	221	316	309	50	896

William Roderick Ross ..... 316 votes (elected)

Edwin Clarke Smith ..... 309 "

John Ross McPherson ..... 221 "

(Signed) J. S. T. ALEXANDER,  
Returning Officer.

[Telegram.]

REVELSTOKE, B. C., October 21st, 1903.

*The Hon. the Provincial Secretary, Victoria, B. C. :*

Please forward to Nelson ballot-boxes and statements in Fernie election. I hold re-count on Monday next.

(Signed) J. A. FORIN,  
Judge.

[Reply.]

VICTORIA, B. C., October 22, 1903.

*Judge J. A. Forin, Revelstoke, B. C. :*

Upon application to Deputy Provincial Secretary, it would appear that ballot-boxes can only be dealt with in accordance with section 154, Provincial Elections Act.

(Signed) A. S. GOODEVE,  
Provincial Secretary.

[Telegram.]

NELSON, B. C., Oct. 22nd, 1903.

*Hon. A. S. Goodeve, Victoria :*

I notice despatch to-day's paper County Judge wiring for ballots. My contention is he has no jurisdiction over ballot boxes. Am I right?

(Signed) W. R. ROSS.



[Reply.]

VICTORIA, B. C., Oct. 22nd, 1903.

*W. R. Ross, Nelson, B. C. :*

Following is answer sent to Judge Forin :—

“Upon application to Deputy Provincial Secretary, it would appear that ballot-boxes can only be dealt with in accordance with section 154, Provincial Elections Act.”

(Signed) A. S. GOODEVE.

[Telegram.]

FERNIE, B. C., Oct. 22nd, 1903.

*Deputy Provincial Secretary, Victoria, B. C. :*

*Re* Fernie election. Summoned to appear before Judge Forin, Nelson, Monday, twenty-sixth inst., with ballot-boxes. Alexander absent and not served. Will boxes be in Nelson? Shall I attend?

(Signed) G. G. MOFFAT,  
*Election Clerk.*

[Reply.]

VICTORIA, 23rd October, 1903.

*G. G. Moffat, Fernie :*

Judge Forin informed ballot-boxes can only be dealt with in accordance with section 154, Elections Act. You must attend summons.

(Signed) A. C. REDDIE.

REVELSTOKE, B. C., October 22nd, 1903.

*The Hon. the Provincial Secretary, Victoria, B. C. :*

SIR,—We have the honour to enclose herewith order of His Honour Judge Forin for the transfer of the ballot boxes and statements *re* Fernie election to Nelson, to be used on the recount on Monday next.

We have, etc.,

(Signed) LEMAISTRE &amp; SCOTT.

[Enclosure.]

*In the matter of the Elections Act, and in the matter of the Election in Fernie Electoral District, William R. Ross and Edwin S. Smith, Nominees.*

Pursuant to application of agent for Mr. S. S. Taylor, K.C., I request that you do please forthwith transfer to Nelson the ballot-boxes and statements herein to be used for purposes of recount at Nelson on Monday, the 26th day of October, instant.

Dated October 21st, 1903.

(Signed) J. A. FORIN,  
*Judge, C. Ct., Kootenay.**The Honourable the Provincial Secretary, Victoria, B. C.*

PROVINCIAL SECRETARY'S OFFICE,  
VICTORIA, 24th October, 1903.

GENTLEMEN,—In reply to your communication of the 22nd instant, I beg to state that, in response to an application already made by wire, His Honour Judge Forin was advised that the Deputy Provincial Secretary, who is the custodian of the ballot-boxes—being named by Statute—could not deal with the same save in pursuance of section 154 of the “Provincial Elections Act.”

I am, etc.,

(Signed) A. S. GOODEVE,  
*Provincial Secretary.*

*Messrs. leMaistre & Scott,  
Barristers, Solicitors, etc., Revelstoke.*



NELSON, B. C., Oct. 30th, 1903.

*Deputy Provincial Secretary, Victoria:*

DEAR SIR,—Some time ago I wired you that we required the ballot-boxes returned, together with all statements, papers, etc., in connection with the re-count ordered by Judge Forin in the matter of the Fernie election. You intimated, as I understood, that you desired the order of a Judge. We thereupon had Judge Forin to make such order and to wire you. This order was forwarded by my agents at Revelstoke, Messrs. leMaistre & Scott, and you have acknowledged receipt of it. You thereupon intimated that you desired the order of a Supreme Court Judge, pursuant to section 154; this order we applied for before Mr. Justice Irving yesterday in Nelson, but he has held that he has no power to make the same, and that section 154 does not go beyond the scope of chapter 67 of the Revised Statutes of British Columbia, and does not give him power to order the delivery of these ballots, etc., for re-count purposes.

I have always been of the opinion that a Judge's order is not necessary in any event, and I simply acceded to your wish for the purpose of avoiding, if possible, unnecessary trouble and delay. It seems perfectly clear by section 44 of the Statutes of 1899, chapter 25, when read in connection with section 152 of chapter 67 of the Revised Statutes, that it is the duty of the Returning Officer to get these ballots, papers, etc., from you when a re-count is ordered. Section 44 says that he *shall obey* the command of the County Court Judge and produce those ballots, papers, etc. Section 152 of chapter 67 says that *immediately* after the close of the election he shall make a return to you of such ballots, papers, etc. Section 43 of chapter 25 of 1899 says that a re-count can be ordered within 10 days after the close of such election, which would be also after such return had been made to you. It must, therefore, be clear that he *shall obey*, pursuant to section 44, the command of the County Court Judge made during those 10 days, and shall produce the ballot-boxes, etc., before the County Court Judge, and that it is his duty alone to get these ballot-boxes back from you.

In the interest of justice, and in order that the remedy provided by the Statute may be given effect to, I appeal to you to return these ballot-boxes to the Returning Officer for the purpose of such re-count, and I trust you will see your way clear to advise me accordingly.

Yours truly,

(Signed) S. S. TAYLOR,

*Solicitor for F. J. Watson the Applicant, and E. C. Smith, the Nominee.*

PROVINCIAL SECRETARY'S OFFICE,  
VICTORIA, 5th November, 1903.

SIR,—I have the honour to acknowledge the receipt of your communication of the 30th ultimo, treating of the question of the Fernie ballot-boxes.

As you are aware, I am the person designated by the Statute to be the custodian of the ballot-boxes, etc., and am such custodian quite apart from any control save the control provided for in the Statute, whereby in certain events I shall be at liberty to deliver the ballot-boxes on an order of the Speaker of the Legislative Assembly, the Supreme Court or a Judge thereof.

You must also be aware that Mr. Justice Irving has held, under the circumstances as they now are, that no order could be made such as I may act upon. I therefore have, and could have, no other reply to your communication than as hereinbefore outlined.

I am, etc.,

(Signed)

A. CAMPBELL REDDIE,  
*Deputy Provincial Secretary.*

*S. S. Taylor, Esq., L. L. B., K. C.,  
Barrister-at-Law, Nelson.*

[Telegram.]

FERNIE, B. C., November 6th.

*Deputy Provincial Secretary, Victoria:*

Have been served with summons to produce Fernie ballot-boxes at Nelson on Monday, November ninth. Please forward them to me there.

(Signed) J. S. T. ALEXANDER,  
*Returning Officer.*



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[Reply.]

VICTORIA, 7th November, 1903.

*J. S. T. Alexander, Fernie :*

Have no authority to forward ballot-boxes. Judge Forin informed they can only be dealt with in accordance with section 154, Elections Act.

(Signed) A. C. REDDIE.

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FERNIE, B. C., November 9th, 1903.

*The Deputy Provincial Secretary, Victoria, B. C. :*

RE FERNIE ELECTION.

SIR,—I have to inform you that in obedience to a mandatory summons issued by His Honour Judge Forin, I appeared before him this morning and explained that I was unable to produce the ballot-boxes used in the Fernie election, as I had forwarded them to you under the provisions of section 152 of the Elections Act, and had no means of procuring their return.

Counsel for the applicant asserted that, under a section of the Act as amended in 1899, the County Court Judge was empowered to order the production of the ballot-boxes, and wished me to call your attention to the same. I have not the Act before me at the moment, but to the best of my recollection the number of the section is 152D.

His Honour then adjourned the hearing of the matter till the 17th instant, at Fernie, and stated that if the ballot-boxes were not then forthcoming he would take such steps to punish me for contempt, either by commitment or otherwise, as counsel for the applicant could show were in his power.

Will you forward the boxes to Fernie?

Your obedient servant,  
(Signed) J. S. T. ALEXANDER,  
*Returning Officer.*

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PROVINCIAL SECRETARY'S OFFICE,  
VICTORIA, 14th November, 1903.

SIR,—I have to acknowledge your letter of the 9th instant, in the matter of the re-count of ballots cast at the late election in the Fernie Electoral District, ordered by His Honour Judge Forin, and intimating that you had been instructed to produce the ballot-boxes.

With regard to your inquiry if I would return the said boxes to you, I can only reiterate that I have no authority to do so without an order of the Speaker of the Legislative Assembly, the Supreme Court or a Judge thereof.

You must also be aware that Mr. Justice Irving has held, under the circumstances as they now are, that no order could be made such as I may act upon.

I am, etc.,  
(Signed) A. CAMPBELL REDDIE,  
*Deputy Provincial Secretary.*

*J. S. T. Alexander, Esq.,  
Fernie, East Kootenay.*

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The following additional correspondence was tendered at the same time by the Attorney-General from his Department:—

[Telegrams.]

ATTORNEY-GENERAL'S OFFICE,  
28th October, 1903.

*W. A. Macdonald, Nelson, B. C. :*

Report here that Judge Irving has made order requiring return of ballot-boxes to Nelson for re-count. Have wired Judge that Act contemplated production only on petition. You have full authority to move against orders or act as in your judgement seems best, communicating with me.

(Signed) A. E. McPHILLIPS,  
*Attorney-General.*

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ATTORNEY-GENERAL'S OFFICE,  
29th October, 1903.

*W. A. Macdonald, Nelson, B. C. :*

*Re* Fernie ballot-boxes and order upon Deputy Provincial Secretary. Being ex-parte, move before Judge Irving to set aside at once, so that, if necessary, can appeal to Full Court, Vancouver, next week. Also apply Judge Irving for stay pending appeal.

(Signed) A. E. McPHILLIPS,  
*Attorney-General.*

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ATTORNEY-GENERAL'S OFFICE,  
29th October, 1903.

*W. A. Macdonald, Nelson, B. C. :*

Go to Vancouver to-night. Wire me there and keep me posted as to all steps taken *re* Fernie matters.

(Signed) A. E. McPHILLIPS,  
*Attorney-General.*

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NELSON, B. C., 29th October, 1903.

*A. E. McPhillips, Attorney-General, Victoria :*

*Re* Fernie. Justice allowed matter to be opened up and after lengthy argument Court decided no jurisdiction and refused to allow order to issue.

(Signed) W. A. MACDONALD.

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ATTORNEY-GENERAL'S OFFICE,  
30th October, 1903.

*W. A. Macdonald, Nelson, B. C. :*

Telegraphic report that Judge Irving refused order. Wire me state of matter.

(Signed) A. E. McPHILLIPS,  
*Attorney-General.*

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FERNIE, B. C., Nov. 21st, 1903.

*The Hon. the Attorney-General, Victoria, B. C. :*

SIR,—I duly received your telegram of the 14th instant in the matter of the application for a re-count of the ballots cast at the Fernie election.

I appeared before Judge Forin on the 17th instant, and informed him that the ballot-boxes were in the possession of the Deputy Provincial Secretary, and that I was powerless to



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produce them. I also showed him a letter from the Deputy Provincial Secretary acknowledging that the boxes were in his hands and refusing to give them up, except on an order of a Judge of the Supreme Court or the Speaker.

The applicants asked for an adjournment, which was granted. The matter is to come up at Nelson on December 17th.

Yours obediently,  
(Sgd.) J. S. T. ALEXANDER.

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ATTORNEY-GENERAL'S OFFICE,  
27th November, 1903.

*J. S. T. Alexander, Esq.,  
Returning Officer, Fernie, B. C. :*

SIR,—I have the honour to acknowledge the receipt of your communication of the 21st instant. It seems to me there is nothing more to be said on the subject. Section 152 of the Provincial Elections Act requires you, immediately after the close of an election, to transmit the returns to the Deputy Provincial Secretary. If due compliance with the law has caused somebody inconvenience, neither you as Returning Officer are, nor I as Attorney-General am, responsible. It would be idle, in my opinion, for the County Court Judge to direct you to produce the ballot-boxes after you have simply obeyed the law by forwarding them as the law required.

If you think it is desirable that counsel should be retained to see that the case is properly argued, you can retain Mr. W. A. Macdonald, of Nelson.

I have the honour, etc.,  
(Signed) CHARLES WILSON.

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VICTORIA, B. C.

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